

EX PARTE OR LATE FILED  
DOW, LOHNES & ALBERTSON, PLLC  
ATTORNEYS AT LAW

ORIGINAL

DOCKET FILE COPY ORIGINAL

J.G. HARRINGTON  
DIRECT DIAL 202-776-2818  
jharrington@dlalaw.com

WASHINGTON, D.C.  
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802  
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600  
ATLANTA, GEORGIA 30346-2108  
TELEPHONE 770-901-8800  
FACSIMILE 770-901-8874

March 24, 1998

**VIA HAND DELIVERY**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

MAR 24 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

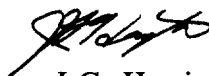
Re: Oral Ex Parte Presentation  
CC Docket No. 96-45  
AAD/USB File No. 98-37

Dear Ms. Salas:

On Monday, March 23, Harold Thompson, Chief Operating Officer of the Iowa Communications Network ("ICN"); Allan Thoms, Chairman of the Iowa Utilities Board; Ted Stillwill, Director of the Iowa Department of Education; Jody Butler of the office of Iowa Governor Brandstad; Elizabeth Nelson, Assistant Attorney General for Iowa; and Kenneth Salomon and the undersigned, counsel for the Iowa Telecommunications and Technology Commission, met with Commissioner Harold Furchtgott-Roth and Kevin Martin of his office. During that meeting we discussed the request of the Iowa Telecommunications and Technology Commission for a determination regarding ICN's regulatory status. The topics discussed during the meeting are described on the attachment, which was provided to the Commission participants during the meeting.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office and copies are being provided to Commissioner Furchtgott-Roth and Mr. Martin by the close of the business day following the meeting. Please inform me if any questions should arise in connection with this filing.

Respectfully submitted,



J.G. Harrington

JGH/vl  
Attachment  
cc (w/o attach.):

Hon. Harold Furchtgott-Roth  
Kevin Martin

No. of Copies rec'd  
List A B C D E

021

**IOWA COMMUNICATIONS NETWORK**  
**REQUEST FOR DETERMINATION OF CARRIER STATUS**  
CC DOCKET NO. 96-45 ♦ AAD/USB FILE NO. 98-37

**Background on the Iowa Communications Network**

- ICN was authorized in 1989, after a lengthy planning process, to provide telecommunications services to secure the future of rural Iowa. Private participation was sought initially. The state built the initial elements of the network only because LECs did not respond to an RFP. The first two phases are state owned; the third phase is leased.
- ICN provides a wide range of services, including long distance, distance learning, telemedicine and Internet.
- Eligibility to use services is established by statute. Distance learning services are available to all entities, public and private, that provide instructional services. Telemedicine services effectively are available to any facility used by a doctor.
- No agency or entity is required to use the ICN.
- ICN's services are offered under standard terms and conditions that do not vary from customer to customer.

**The ICN Request for Determination**

- The *Fourth Reconsideration Order* finds that "state telecommunications networks" generally will not be eligible for universal service reimbursement for services provided to schools, libraries and rural health care institutions based on their specific characteristics, including:
  - Limitation of service to government agencies.
  - Operation entirely through resale of other carriers' services.
  - Requirements that state agencies use the state network.
- ICN does not seek reconsideration of the *Fourth Reconsideration Order*.
- ICN seeks a determination that it has characteristics that differ from those of "state telecommunications networks" and that it is a telecommunications carrier.

**The Effects of Commission Action in This Matter**

- In some cases, and especially in rural Iowa, ICN is the only source for advanced services today, so failure to grant ICN's request will mean that the affected schools and libraries will be unable to obtain any support at all.
- Absent grant of ICN's request, some schools and libraries will be eligible for support (*i.e.*, those that get service via resold facilities) and some will not (*i.e.*, those that get service via ICN's own facilities), even though the service they receive is identical. Grant of the request will ensure equitable treatment for all schools and libraries in Iowa.
- Grant of ICN's request will increase the number of options available to schools, libraries and rural health care institutions and therefore should reduce the overall costs of obtaining those services.

**ICN's Status as a Telecommunications Carrier**

- The Commission has held that a common carrier is a telecommunications carrier. Under longstanding principles of law, a common carrier must hold itself out indifferently to its potential customers on standard terms and conditions.
- A carrier need not provide every possible service and may choose to serve only particular types of customers. For instance, competitive access providers historically offered only access services and served only large businesses and long distance carriers. The *Universal Service Order* acknowledges that an entity may be a carrier even though it has a specifically limited customer base.
- ICN's distance learning and telemedicine services are available to all potential customers of those services. Although ICN's governing statute specifies the customers it may serve, for these services ICN is allowed to serve all potential customers, public or private.
- ICN offers its services on standard terms and conditions. Although ICN does not file tariffs, there are many carriers that are not required to file tariffs, including CMRS providers and interstate competitive access providers.
- Based on these facts, the Iowa Utilities Board, the certifying agency in Iowa, has concluded that ICN meets the criteria for being a telecommunications carrier.
- ICN will comply with all common carrier and telecommunications carrier obligations, including universal service contributions.